



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 14-02248
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

February 17, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On August 1, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On September 3, 2014, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on October 21, 2014. DOHA issued a notice of hearing on October 23, 2014, and the hearing was held as scheduled on November 14, 2014. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through P, which were also admitted without objection. Applicant's husband also testified on Applicant's behalf. At the hearing, the record was kept open until December 1, 2014, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and

entered into evidence without objection as Exhibits Q through EE. DOHA received the transcript of the hearing (Tr) on November 25, 2014. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and her husband, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, as reviewed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 61 years old. She is married, and she has two daughters and one stepson. Applicant is a high school graduate. She has been employed by her current employer, a defense contractor, for 24 years, and she is seeking a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 14 allegations (1.a. through 1.n.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a medical account in the amount of \$143. Applicant denied this allegation on her RSOR. At the hearing, Applicant testified that she has disputed this and all of the medical bills listed on the SOR, (1.a., b., j., k., l., m., and n.), that were incurred by her husband, because she believes they should have been covered under her insurance with the remainder to be paid by Medicare. (Tr at 37, 61-63.) On Exhibit Q, Applicant indicated that this debt, together with 1.b., below, was paid by Applicant in the total amount of \$340.45. Based on the record, this debt has been paid in full.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$145. Applicant denied this allegation on her RSOR. This overdue debt is cited in the SOR for a medical account in the amount of \$143. Applicant denied this allegation on her RSOR. As reviewed above, Applicant indicated that this debt, together with 1.a., above, was paid by Applicant in the total amount of \$340.45. Based on the record, this debt has been paid in full.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$2,968. Applicant admitted this allegation on her RSOR. At the hearing, Applicant testified that she is making monthly payments of \$113.23. Exhibit R establishes that Applicant has a payment plan in place with this creditor to pay \$113.23 a month and that by the time of the hearing she had made nine monthly payments in that amount. I find that this debt is being resolved.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$5,549. Applicant admitted this allegation on her RSOR, writing that she is making payments of \$131.21. Exhibit S establishes that Applicant has a payment plan in place with this creditor to pay a minimum of \$100 a month and that by the time of the hearing she had made five monthly payments of \$131.21 and one payment of \$100. I find that this debt is being resolved.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,525. Applicant denied this allegation on her RSOR. Applicant testified that she could find no documentation to establish that she owes this debt or even where to write to inquire as to the origin of this debt. (Tr at 52-53.) In Exhibit T, Applicant reiterates that she has been unable to locate this creditor, but she is still attempting to find them. I find that Applicant has been making a good faith effort to resolve this debt.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$4,274. Applicant denied this allegation on her RSOR. At the hearing, Applicant testified that she is disputing this medical bill, incurred by her 27 year old daughter, for which Applicant never was a co-signer. (Tr at 53-56.) Exhibit U consists of a letter sent to the creditor on November 20, 2014, from Applicant's daughter, in which she reiterates that this debt was incurred by the daughter and that the daughter should be the only one responsible for it, not her mother. I find that Applicant has a good-faith reason to dispute this debt and is attempting to do so.

1.g. This overdue debt is cited in the SOR for a past-due account in the amount of \$332. Applicant admitted this allegation on her RSOR, writing that she has paid this debt in full. Exhibit CC includes a letter from this creditor, establishing that this debt was settled in full for \$149 on July 7, 2013. I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$736. Applicant admitted this allegation on her RSOR. Applicant testified that she has paid \$575 to settle this case. (Tr at 57-59.) Exhibit C establishes that this debt has been settled in full. I find that this debt has been resolved.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$4,934. Applicant wrote on her RSOR and testified that she believed this was the same debt as that listed as 1.f., above, which as reviewed above, is the debt of Applicant's daughter that Applicant is disputing. She made the contention that this is the same debt as 1.f., based on the amount being very similar and the account number being the same on both debts. (Tr at 59-60.) I find that this debt is a duplicate of 1.f., above.

1.j. This overdue debt is cited in the SOR for a medical account placed in a collection account in the amount of \$265. Applicant denied this allegation on her RSOR. As reviewed above, Applicant testified that all of the medical bills listed on the SOR should have been resolved by her health insurance and Medicare. (Tr at 61-63.) (See 1.a., above.) On Exhibit Y, Applicant indicated that she has been unable to locate this

creditor, and it does not appear this account exists. I find that Applicant has been making a good faith effort to resolve this debt.

1.k. This overdue debt is cited in the SOR for a medical account in the amount of \$250. Applicant denied this allegation on her RSOR. As reviewed above, Applicant is disputing this medical bill because she believed it should have been paid under her insurance and Medicare. On Exhibit Y, Applicant indicated that she has been unable to locate this creditor, and it does not appear this account exists. I find that Applicant has been making a good faith effort to resolve this debt.

1.l. This overdue debt is cited in the SOR for a medical account in the amount of \$162. Applicant denied this allegation on her RSOR. The debts listed as SOR allegations 1.l., m., and n. are to the same creditor. Exhibit EE is a letter from this creditor, stating that this account to this creditor has been paid in full. I find that this debt has been resolved.

1.m. This overdue debt is cited in the SOR for a medical account in the amount of \$95. Applicant denied this allegation on her RSOR. On Exhibit Z, Applicant wrote that she has paid this debt in full in 2012. I find that this debt has been resolved.

1.n. This overdue debt is cited in the SOR for a medical account in the amount of \$54. Applicant denied this allegation on her RSOR. On Exhibit Z, Applicant wrote that she has paid this debt in full in 2012. I find that this debt has been resolved.

Applicant testified as to the reasons for her financial difficulties. In 2005, her family went on a river rafting trip, during which they were involved in a rafting accident. Their guide lost control of their raft, and the family was all thrown from the raft. Because of the way her husband fell, his foot had to be amputated. As a result of his injury, in 2006, he was terminated from his employment. The family income was reduced from two providers to one, and Applicant's husband has not been employed since 2006. Beside their income being reduced by more than 50%, since he earned more than she, they also incurred additional medical bills, as has been reviewed above. (Tr at 64-67.)

Applicant testified that it took her about three years to begin to get their lives back on track, and she then began contacting creditors to attempt to resolve her overdue debts. Aside from working to resolve the debts that are listed on the SOR, Applicant also resolved additional debts, which were not listed on the SOR. (Tr at 67.) Exhibits J-P and AA establish that Applicant has settled with six other creditors beside those listed on the SOR.

Mitigation

Applicant introduced four extremely laudatory character letters on her behalf. (Exhibit I.) Individuals described the tremendous challenge Applicant and her family faced because of her husband's accident and loss of income. She was described as an "extremely trustworthy, honest, hardworking, law abiding decent person." Applicant also submitted five certificates she has earned during her current employment. (Exhibit H.)

Applicant's husband also testified on Applicant's behalf. He confirmed that he had suffered this very serious injury that resulted in him losing his foot. He also confirmed that they are now current with all of their present bills. (Tr at 82-90.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations,” may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” As reviewed above, Applicant’s husband’s serious injury, and subsequent loss of earnings, were the causes of her family’s financial difficulties and potentially make this condition applicable in this case. I find that Applicant has acted reasonably and responsibly, in that not only has she contacted all of the creditors that she could find for the overdue debts listed on the SOR, and set up payment plans with each, or paid them in full, but she has also paid those debts that were not listed on the SOR. She also acted responsibly by disputing debts that she had a good-faith belief were not hers. As the evidence has shown, Applicant is in the process of resolving those overdue debts that she could not resolve all at one time. Accordingly, I find that Applicant has acted responsibly. Therefore, this mitigating condition is applicable in this case.

Additionally, I find that ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay her overdue creditors or otherwise resolve debts.” Finally, Applicant’s current financial situation is stable, with all of her financial obligations being met in a timely and responsible manner. Therefore, I find Guideline F for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to a classified position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling, I find that the record evidence leaves me with no significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. -1.n.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge